

1 ROBERT BORTON (SBN 53191)
Email: robert.borton@hellerehrman.com
2 DANIEL KAUFMAN (SBN 246041)
Email: daniel.kaufman@hellerehrman.com
3 HELLER EHRMAN LLP
333 Bush Street
4 San Francisco, CA 94104-2878
Telephone: (415) 772-6000
5 Facsimile: (415) 772-6268

6 Attorneys for Petitioner
HO RIM KAM
7

8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA
10

11 HO RIM KAM,

12 Petitioner,
13

14 v.

15 MARTIN LUTHER KING, JR.-MARCUS
GARVEY SQUARE COOPERATIVE BOARD
OF DIRECTORS,
16

17 Respondent.
18

Case No.: C 07 4414 (SBA)

**DECLARATION OF ROBERT E.
BORTON IN SUPPORT OF
MOTION TO SHORTEN THE
TIME FOR HEARING OF MOTION
TO REMAND
(NORTHERN DISTRICT LOCAL
RULE 6-3)**

The Honorable Sandra B. Armstrong
Date: N/A
Time: N/A
Court: Courtroom 3, 3rd Floor

19 I, Robert E. Borton, declare as follows:
20

21 1. I am an attorney at law, duly licensed to practice in the State of California,
and a member of the law firm of Heller Ehrman LLP, counsel for Petitioner Ho Rim Kam.
22 I have personal knowledge of the facts contained in this Declaration, and if called as a
23 witness, I would testify competently to the facts stated herein.
24

25 2. I submit this declaration in support of Petitioner's Motion to Shorten Time for
Hearing of Motion for Remand.
26

27 3. My law firm has served as counsel for Mr. Kam since April, 2006.

28 4. On August 30, 2001, I contacted Ms. Katherine Catlos, Respondent's lead

1 counsel, by telephone and email to seek a stipulation shortening time to hear this Motion for
2 Remand. I explained why we believe a shortened briefing schedule is necessary. Ms.
3 Catlos advised that she could not stipulate to the briefing schedule proposed, though was
4 willing to agree to a hearing on September 25, 2007. Counsel's correspondence is attached
5 as Exhibits 1 and 2 to this Declaration. Because we believe that the Motion for Remand
6 must be heard sooner so that the purpose of the Mandate remedy can be realized, I advised
7 Ms. Catlos that we would file the Motion for Remand and a Motion to Shorten Time for
8 Hearing the Motion for Remand on Friday, August 31, 2007.

9 5. If the court does not shorten time, Mr. Kam will suffer substantial harm and
10 prejudice. Mr. Kam filed his mandamus petition under California Code of Civil Procedure
11 §1085, on August 6, 2007. That statute is designed to provide speedy relief in instances
12 exactly like the one involved here. The Writ addressed only whether, under California law,
13 Mr. Kam had been improperly excluded from exercising his rights as a board member of
14 this California non-profit corporation. Hearing on the Writ had been set for August 22. On
15 August 21, Respondent's requested that the Writ hearing be continued and that counsel be
16 allowed to file a belated response. Mr. Kam agreed to a one week continuance.
17 Respondent then filed its Notice of Removal. By removing this case to federal court and
18 delaying relief to Mr. Kam, Respondent has diluted the effect of §1085. If the court does
19 not shorten time, §1085 will be entirely negated, thereby substantially harming and
20 prejudicing Mr. Kam.

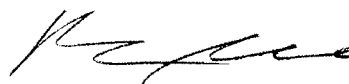
21 6. Plaintiff's Motion for Remand shows that the removal of this action was
22 without basis in federal law. As shown by the record attached to Respondent's Notice of
23 Removal, Mr. Kam's Mandamus Petition was brought entirely under state law, raising only
24 a question of interpretation of the by-laws of a California non-profit Corporation. Mr. Kam
25 was excluded from the Board in violation of the Respondent Board's By-laws, an issue
26 governed by the California Corporations Code. Opposing Counsel broadly claims that the
27 mandamus action somehow "implicates" issues of federal law, but Mr. Kam's Petition does
28 not rely upon or cite any federal case or statute.

1 7. Mr. Kam is being prevented by Respondent's removal filing from the quick
2 resolution of Mandamus contemplated by statute. He is being prevented from exercising his
3 rights as a Director of Respondent Board, and is unable to represent and protect the rights of
4 his constituents. Before his exclusion, the Board had been under pressure to make critical
5 decisions affecting the Cooperative's finances. Without Mr. Kam's vote the Board is
6 divided, and Mr. Kam believes that the effort to exclude him, taken upon the eve of a Board
7 vote, was intended to disable him from voting on this important issue.

8 8. There have been no time modifications in the underlying case in this Court
9 (and only one earlier stipulation, requested by opposing counsel, to extend the hearing date
10 in state court prior to removal).

11 9. The Motion to Shorten Time proposes a briefing schedule whereby the
12 Board's opposition brief would be filed and served by hand or facsimile on Thursday,
13 September 6, 2007; Mr. Kam's reply would be filed and served by hand or facsimile on
14 Monday, September 10, 2007; and the Motion to Remand would be heard on Tuesday,
15 September 11, 2007. Mr. Kam does not believe that a hearing on this motion is necessary,
16 unless the Court wishes to have argument. Therefore, counsel's unavailability in San
17 Francisco on the requested hearing date should not impede the relief sought here.

18 I declare under penalty of perjury under the laws of the State of California that the
19 foregoing is true and correct and that this declaration is executed this 31st day of August,
20 2007.

21
22 

23 Robert E. Borton
24
25
26
27
28

EXHIBIT 1

HellerEhrman
ATTORNEYS

August 30, 2007

Robert E. Borton
Robert.Borton@hellerehrman.com
Direct +1 (415) 772-6498
Direct Fax +1 (415) 772-2098
Main +1 (415) 772-6000
Fax +1 (415) 772-6268

98050.1259

Katherine S. Catlos
Kaufman Dolowich & Voluck LLP
351 California Street, Suite 500
San Francisco, CA 94104

**Re: Ho Rim Kam v. Martin Luther King, Jr.-Marcus Garvey Square Cooperative
Board of Directors**

Dear Ms. Catlos:

I am writing to request that you stipulate, with us, to shorten the time for Notice of Motion under the Federal and Local Rules, so that our client's Motion to Remand this case to the California Superior Court can be heard on an accelerated schedule

This request is consistent with what I believe all of us will consider the need for an immediate resolution of questions of Federal jurisdiction. The attached Stipulation sets out our request in more detail, but it turns on the fact that the issues of the composition and competence of the Board of Directors of the Coop must be promptly resolved, and that this, of course, is in the best interests of your client as well as ours.

We ask that you stipulate to having our motion heard on Tuesday, September 11, 2007, with a filing and briefing schedule as set out in the stipulation. We expect to be ready to file the Motion tomorrow.

Thank you for your anticipated cooperation and courtesy in this matter.

Sincerely yours,



Robert E. Borton

1 ROBERT BORTON (SBN 53191)
robert.borton@hellerehrman.com
2 DANIEL KAUFMAN (SBN 246041)
daniel.kaufman@hellerehrman.com
3 HELLER EHRMAN LLP
333 Bush Street
4 San Francisco, CA 94104-2878
Telephone: (415) 772-6000
5 Facsimile: (415) 772-6268

6 Attorneys for Petitioner
HO RIM KAM
7

8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA
10

11 HO RIM KAM,

12 Petitioner,

13 v.

14 MARTIN LUTHER KING, JR.-MARCUS
15 GARVEY SQUARE COOPERATIVE BOARD
OF DIRECTORS,

16 Respondent.
17
18

Case No.: C 07 4414 (SBA)

**STIPULATED ORDER
SHORTENING TIME FOR NOTICE
OF HEARING ON MOTION TO
REMAND TO STATE COURT
(28 USC §1447; NO. DISTRICT
LOCAL RULES 6-2 AND 7-12)**

The Honorable Sandra B. Armstrong
Date: September 11, 2007
Time: 1:00 p.m.
Court: Courtroom 3, 3rd Floor
19
20

21 Pursuant to Northern District Local Rule 6-2 and 7-12, the parties to this action
22 hereby stipulate, through their counsel of record, and request that the Court issue its Order
23 Shortening the Time for Notice of Plaintiff Ho Rim Kam's Motion to Remand to State
24 Court, so that such motion may be heard at 1:00 p.m. on Tuesday, September 11, 2007. In
25 addition, the parties stipulate, and request that the Court issue its Order, fixing the following
26 briefing schedule for the Motion to Remand:
27
28

Motion to be filed: August 31, 2007
Opposition Brief to be filed: September 6, 2007
Reply Brief to be filed: September 10, 2007
Hearing Date: September 11, 2007

DECLARATION OF COUNSEL

Pursuant to Northern District Local Rule 6-2, the undersigned counsel hereby declare as follows:

1. Robert E. Borton, Heller Ehrman LLP, is counsel of record for plaintiff Ho Rim Kam. Katherine S. Katlos, Kaufman, Dolowich & Voluck LLP, is counsel for defendant Martin Luther King, et al Board of Directors. The matters stated in this declaration are personally known to the declarants who, if sworn, would testify to the truthfulness of all such matters.

2. This request for shortened noticed time was made by Plaintiff and is agreed to by Defendant for the reason that all parties believe that the issue of federal jurisdiction should be decided as quickly as possible in this matter. Issues of the competence and composition of the Board of Directors of the Martin Luther King/Marcus Garvey Cooperative are issues that directly affect the rights and interests of all parties and should also be resolved as promptly as possible. Further, Plaintiff's Petition for Writ of Mandamus initially set for hearing on August 22, 2007 in the San Francisco Superior Court, was then continued at the request of Defendant's counsel to August 30, 2007, and was then postponed by the removal of this action to the United States District Court. Accordingly, the parties agree that the prompt resolution of this matter is important to all parties.

3. There have been no previous modifications of time in this case, either by stipulation or Court Order.

1 4. This requested modification of time will have no effect on other matters set
2 forth in the Court's initial Orders or otherwise provided under the Federal Rules of Civil
3 Procedure, beyond resolving the important initial question of federal court jurisdiction.

4
5 DATED: August ___, 2007

HELLER EHRMAN LLP

6
7 By _____

ROBERT E. BORTON (SBN 53191)

8 Attorneys for Plaintiff

9
10 DATED: August ___, 2007

KAUFMAN DOLOWICH & VOLUCK LLP

11
12 By _____

Katherine S. Katlos (SBN 184227)

13 Attorneys for Defendant

14
15 ORDER

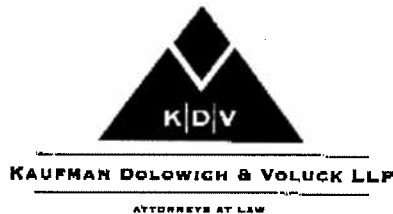
16 PURSUANT TO STIPULATION, IT IS SO ORDERED.

17
18 DATED: _____, 2007.

19 _____
SAUNDRA B. ARMSTRONG

20 UNITED STATES DISTRICT COURT JUDGE

EXHIBIT 2



KATHERINE S. CATLOS
KCATLOS@KDVLLAW.COM

AUGUST 30, 2007

VIA FACSIMILE AND REGULAR MAIL

Robert Borton, Esq.
Heller Ehrman LLP
333 Bush Street
San Francisco, CA 94104-2878

**Re: *Kam v. Martin Luther King, Jr.-Marcus Garvey*
Square Cooperative Board of Directors
San Francisco Superior Court, Case No.: CPF 07-507493**

Dear Mr. Borton:

This responds to your request of August 30, 2007. As I mentioned in our conference call today, I am in Los Angeles from September 7, 2007 to September 12, 2007 for business and have a mediation in Sacramento on September 18, 2007. Therefore I am unable to stipulate to shorten time for a Notice to Remand this case to California Superior Court for either September 11, 2007 or September 12, 2007.

As a courtesy, I indicated that it would be agreeable to have this matter heard on September 25, 2007. In addition, I mentioned to you that we intend to file a 12(b)(6) Motion to Dismiss and you are agreeable to having that Motion heard on either October 9, 2007 or October 16, 2007.

Very truly yours,

Katherine S. Catlos, Esq. of
Kaufman Dolowich & Voluck LLP

KSC/kd

351 CALIFORNIA STREET, SUITE 500, SAN FRANCISCO, CA 94104
PHONE: 415.402.0059 | FAX: 415.402.0679 | WWW.KDVLLAW.COM

SAN FRANCISCO | NEW YORK | PHILADELPHIA | NEW JERSEY